

## REMARKS

Claims 1-14 and 16-21 are pending in the present application. By this Amendment, previously presented claims 1-3, 8-9, 11 and 13-14 have been amended; and new claims 18-21 have been added. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendment and the following remarks.

### I. Formal Matters:

#### Allowable Subject Matter

Applicants note with appreciation that previously presented claims 7-8 and 11 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As shown above, previously presented claim 8 has been rewritten in independent form including all of the limitations of base claim 1 and intervening claims 3 and 4.

#### Previously Submitted Information Disclosure Statement (IDS)

Applicants have corrected the serial number and resubmitted herewith the previously presented IDS as suggested in the May 13, 2009 non-final Office Action. Consideration and acknowledgement of the IDS is respectfully requested.

### II. Prior Art Rejections:

#### Rejection of Previously Presented Claims 1-5, 9-10, 12 and 16 Under 35 U.S.C. §102(b) In View Of European Patent Application Publication No. 1 023 832 A1 (Aven)

Previously presented claims 1-5, 9-10, 12 and 16 were rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Application Publication No. 1 023 832 A1 to Aven (hereinafter, "Aven"). This rejection is respectfully traversed.

In order for the disclosure of Aven to anticipate Applicants' claimed invention, the disclosure of Aven must disclose each and every claim feature recited in the claims. See, for example, *Finnigan Corp. v. International Trade Commission*, 180 F.3d 1354, 1365, 51 USPQ2d 1001, 1009 (Fed. Cir. 1999), in which the Court stated "In order to establish anticipation, a prior

art reference must disclose every feature of the claimed invention.”

The disclosure of Aven fails to teach or suggest at least the following claim features recited in Applicants’ independent claim 1:

- (1) an agrochemical concentrate comprising an oil-based adjuvant and a hydrotrope capable of solubilising the adjuvant; and
- (2) an agrochemical concentrate comprising a continuous water-containing single phase comprising an oil-based adjuvant and a hydrotrope capable of solubilising the adjuvant.

Since the disclosure of Aven fails to disclose each and every claim feature recited in Applicants’ independent claim 1, the disclosure of Aven cannot anticipate independent claim 1. Since claims 2-5, 9-10, 12 and 16 depend from independent claim 1 and recite additional claim features, the disclosure of Aven cannot anticipate dependent claims 2-5, 9-10, 12 and 16.

As noted in Applicants’ May 12, 2008 Amendment and Response, the disclosure of Aven fails to disclose agrochemical concentrate comprising (1) an oil-based adjuvant and (2) a hydrotrope capable of solubilising the adjuvant. As used throughout Applicants’ original specification and the pending claims, the term “oil-based adjuvant” means “a liquid adjuvant or mixture of adjuvants that is substantially insoluble in the aqueous continuous phase of the agrochemical concentrate.” The disclosure of Aven fails to disclose any oil-based adjuvant as defined in Applicants’ original specification and as required in independent claim 1.

The May 13, 2009 Office Action maintains the position that the alkylpolyglycosides (APGs) disclosed in Aven are “oil-based adjuvants” as recited in Applicants’ claimed agrochemical concentrate. Applicants disagree, and maintain the position that the APGs disclosed in Aven are water-soluble APGs, not adjuvants that are substantially insoluble in an aqueous phase, namely, oil-based adjuvants.

On page 3, lines 11-20, the May 13, 2009 Office Action points to the teaching of Hill (i.e., Hill et al., “Alkyl Polyglycosides: Technology, Properties and Application,” 1997, pp. 14-18, 20 and 39-40 (VCH Verlagsgesellschaft mbh, D-69451 Weinheim DE)) to support the position that (1) APGs having an alkyl chain length of C16 or longer are water-insoluble, while APGs having an alkyl chain length of less than C16 are water-soluble, and (2) Aven discloses APGs having an alkyl chain length of from C8 to C18. Applicants note that alkyl chain length

alone does not determine whether a given APG is water-soluble or water-insoluble. In order to determine whether a given APG is water-soluble or water-insoluble, the alkyl chain length and the degree of polymerization must be considered for the APG.

The only disclosure of Aven with regard to the degree of polymerization of the disclosed APGs is on page 5, lines 24-25, wherein Aven discloses:

Most preferred are C8-10 and C12-14 alkylpolyglycosides having a degree of polymerization of 1.3 to 1.6, in particular 1.4 or 1.5.

These APGs (i.e., disclosed on page 5, lines 24-25) are water-soluble APGs. Further, when viewed in combination with the entire disclosure of Aven, it is clear that the disclosure of Aven is directed to water-soluble APGs, not water-insoluble APGs. See, for example, paragraphs [0003] and [0009] of Aven, which disclose that the disclosed adjuvants (e.g., the disclosed APGs) may be added directly to a spray tank (of water). One skilled in the art would not add a water-insoluble adjuvant directly into a spray tank of water.

In addition, it should be noted that the disclosure of Aven fails to disclose an agrochemical concentrate comprising a continuous water-containing single phase comprising an oil-based adjuvant and a hydrotrope capable of solubilising the adjuvant. There is no disclosure in Aven of a continuous single phase comprising (i) water, (ii) an oil-based adjuvant as defined in Applicants' original specification, and (iii) a hydrotrope capable of solubilising the oil-based adjuvant in the continuous single phase.

For at least the reasons provided above, the disclosure of Aven fails to anticipate Applicants' claimed invention as embodied in claims 1-5, 9-10, 12 and 16. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claims 6, 13-14 and 17 Under 35 U.S.C. §103(a) In View of Aven

Previously presented claims 6, 13-14 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable in view of Aven. This rejection is respectfully traversed for (i) at least the reasons presented in Applicants' May 12, 2008 Amendment and Response, and (ii) the reasons provided below.

The teaching of Aven fails to disclose, teach or suggest (1) an agrochemical concentrate comprising an oil-based adjuvant and a hydrotrope capable of solubilising the adjuvant; and (2) an agrochemical concentrate comprising a continuous water-containing single phase comprising an oil-based adjuvant and a hydrotrope capable of solubilising the adjuvant as recited in independent claim 1. Claims 6, 13-14 and 17 depend from independent claim 1, and recite addition claim features. Consequently, the teaching of Aven fails to make obvious Applicants' claimed invention as embodied in claims 6, 13-14 and 17. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claims 1-6, 9-10, 12-14 and 16-17 Under 35 U.S.C. §103(a) In View of Aven

Previously presented claims 1-6, 9-10, 12-14 and 16-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable in view of Aven. This rejection is respectfully traversed.

As discussed above, the teaching of Aven fails to disclose, teach or suggest (1) an agrochemical concentrate comprising an oil-based adjuvant and a hydrotrope capable of solubilising the adjuvant; and (2) an agrochemical concentrate comprising a continuous water-containing single phase comprising an oil-based adjuvant and a hydrotrope capable of solubilising the adjuvant as recited in independent claim 1.

In particular, the teaching of Aven fails to disclose, teach or suggest oil-based adjuvants (as discussed above). Further, the teaching of Aven fails to disclose, teach or suggest (i) the incorporation of an oil-based adjuvant into an aqueous phase of an agrochemical concentrate, and then (ii) the further incorporation of a hydrotrope into the aqueous phase of the agrochemical concentrate so as to solubilising the oil-based adjuvant and produce a continuous water-containing single phase in the agrochemical concentrate. There simply is no suggestion of such an agrochemical concentrate.

For at least the reasons provided herein, the teaching of Aven fails to make obvious Applicants' claimed invention as embodied in independent claim 1. Since claims 2-6, 9-10, 12-14 and 16-17 depend from independent claim 1, and recite addition claim features, the teaching of Aven also fails to make obvious Applicants' claimed invention as embodied in

claims 2-6, 9-10, 12-14 and 16-17. Accordingly, withdrawal of this rejection is respectfully requested.

III. New Claims 18-21:

New claims 18-21 are directed to various embodiments of Applicants' present invention. New claims 18-20 depend from independent claim 1 (discussed above), and recite additional claim features.

New independent claim 21 is directed to an agrochemical concentrate comprising a continuous aqueous phase, wherein the continuous aqueous phase comprises (i) water, (ii) an oil-based adjuvant comprising at least one liquid adjuvant that is substantially insoluble in the water, (iii) a hydrotrope comprising at least one water soluble, amphiphilic substance that does not form micelles when present alone in water at concentrations below 50% by weight, the hydrotrope being capable of solubilising the oil-based adjuvant in the water; wherein the continuous aqueous phase appears as a single phase when viewed via an unaided eye.

Support for new claims 18-21 may be found in at least the following locations of Applicants' original specification: page 3, lines 24-26, page 4, lines 19-24, and page 5, lines 3-5 (claims 18 and 21); and page 6, lines 1-21 (claims 19-20).

For at least the reasons given above with regard to claims 1-6, 9-10, 12-14 and 16-17, Applicants respectfully submit that new claims 18-21 are allowable over the art of record.

IV. Conclusion:

For at least the reasons given above, Applicants submit that claims 1-6, 9-10, 12-14 and 16-21 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Pryor believe that further action is necessary to place the application in better condition for allowance, Examiner Pryor is respectfully requested to contact Applicants' representative at the telephone number listed below.

Amendment and Response  
Serial No. 10/567,230

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,  
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